

REMARKS

Claims 39 and 40 are the only claims at issue. The Examiner rejected claims 39 and 40 under 35 U.S.C. § 112 as failing to comply with the written description requirement. The basis for this rejection is found on pages 2 and 3 of the Office Action mailed 11/30/2005, where the Examiner stated that

“...claim 39 contains the limitation ‘a particulate layer...is at least two particulate particles thick.’ The specification does not disclose the thickness of the particulate layer, therefore this limitation is considered new matter.”
“Furthermore, the drawings do not support this limitation since figure 9 shows that the particle layer is discontinuous and sometimes not even one particle thick.”

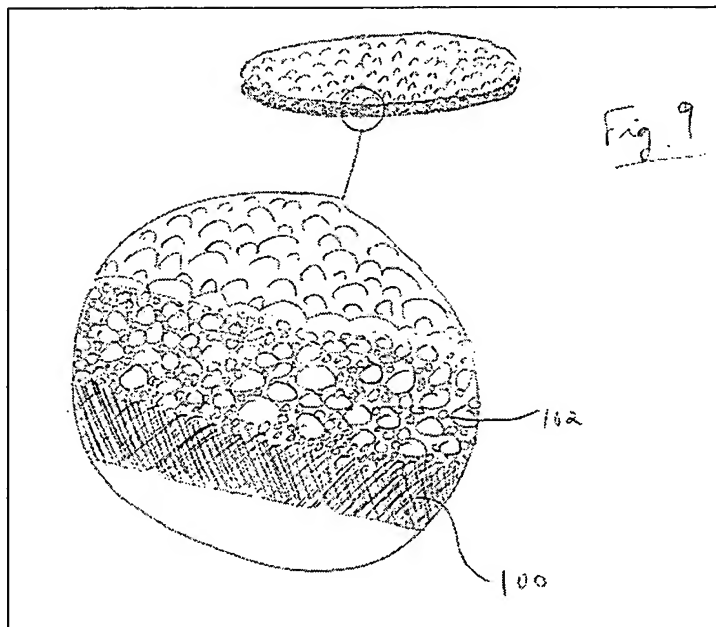
Applicant presents below the relevant portion of the informal drawing of Fig. 9 that was submitted with the application of which the present application is a divisional. Applicant has also enclosed a replacement Fig. 9 that more accurately shows the details of the informal drawing. The informal drawing and appended replacement drawing sheet clearly show the existence of numerous particles through the thickness of the flooring unit, and the particulate layer is at least two such particles thick. There are at least two particles shown between the top of the flooring unit and the fiber layer. Thus, the claim limitation that the particulate layer is at least two particles thick is fully supported by the specification.

The legal standard for determining whether the written description requirement has been met is whether the specification “convey[s] with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of *the invention*.”¹ The *Alton* Court pointed out that:

¹ *In re Alton*, 37 USPQ 2d 1578, 1581 (Fed. Cir. 1996) (emphasis in original).

“In order to meet the adequate written description requirement, the applicant does not have to utilize any particular form of disclosure to describe the subject matter claimed, but ‘the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed’” *In re Alton*, 37 USPQ 2d 1578, 1581.

The informal Fig. 9 shows the flooring unit with a clear view of the side and the particles across the unit’s thickness. The specification at paragraph [0038] also describes Fig. 9 as showing “[a] finished molded unit” after “epoxy resin, is mixed with stones and the mixture is poured into the mold over the fibers.” “The top, wearing surface of the molded unit is formed by the stones coated with epoxy resin 102...”. These resin-coated stones 102 are shown from the side view of Fig. 9, and constitute the particulate of the unit, as the term “particulate” is defined in paragraph [0020]. The stones are of various sizes in Fig. 9, and the thickness of the particulate layer is at least two such stones thick. Thus, Fig. 9 and the description clearly allow persons of ordinary skill in the art to recognize that the inventor invented what is recited in claim 39.



The Federal Circuit has stated that drawings can provide a written description of an invention. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555 at 1565, 19 USPQ 2d 1111 (Fed. Cir. 1991) (“under proper circumstances, drawings alone may provide a ‘written description’ of an invention as required by § 112.”). In this case, there is a drawing and a description referring to the drawing and discussing the parts thereof. Therefore, Applicant respectfully requests that the rejection be withdrawn, because the written description requirement has been met.

In the drawing the change is an increased number of particles shown in the side of the flooring unit as in the informal Fig. 9.

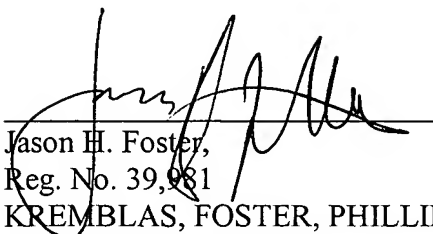
Therefore, reconsideration and allowance are respectfully requested.

The examiner is authorized to communicate with the undersigned attorney by email by the following recommended authorization language: Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file. (authorization pursuant to MPEP 502.03)

The Commissioner is authorized to charge Deposit Account No. 13-3393 for any insufficient fees under 37 CFR §§ 1.16 or 1.17, or credit any overpayment of fees.

Respectfully submitted,

28 Feb. 2006
Date of Signature



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Enclosure: Transmittal Form
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